

# EXHIBIT U

**EXHIBIT 9**  
**UNREDACTED VERSION**  
**OF DOCUMENT SOUGHT**  
**TO BE SEALED**

July 28, 2016

\*\* HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY \*\*  
IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CISCO SYSTEMS, INC.,

Plaintiff,

v.

No. 5:14-cv-05344-BLF

ARISTA NETWORKS, INC.,

Defendant.

\_\_\_\_\_/

\*\* HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY \*\*

VIDEOTAPED DEPOSITION OF CATE M. ELSTEN

THURSDAY, JULY 28, 2016

SAN FRANCISCO, CALIFORNIA

DEBORAH MAYER, CSR 9654, RPR CRR CRP CLR

U.S. LEGAL SUPPORT - SAN FRANCISCO

1	A. Yes.
---	---------

2 | Q. And it's specified that's the past ten years?

3	A. Yes.
---	---------

4 Q. Do you have additional publications previous to  
5 those, prior to the past ten years?

6	A. Yes.
---	---------

7 | Q. Have you written any books?

8           A.    Books?  No.  A book chapter is as close as I've  
9   gotten to that.

10	Q. Is that book chapter listed here?
----	--------------------------------------

11	A.	No.
----	----	-----

12	Q. What is the book chapter concerning?
----	---

13           A.     It was for the litigation services handbook, I  
14     forget what edition, and it was about non patented  
15     intellectual property.

16 Q. Is that the only book chapter that you've  
17 written that you recall?

18           A.     No, actually. There was another one that  
19     was -- it had an intellectual property angle. It was  
20     for a book that was targeted at the insurance industry,  
21     and I do not remember more of the specifics on that. I  
22     think it essentially concerned the nature of damages and  
23     therefore the potential exposure related to intellectual  
24     property, and it was aimed at insurance executives.

25 Q. Prior to the publications that you've listed in

1 | your CV, do you recall any other publications that  
2 | you've written specific to patent damages?

3	A. Yes.
---	---------

4 Q. What are those, that you recall?

5 | A. I don't recall.

6 Q. But you think you've written articles specific  
7 to patent damages?

8           A.     You know, I know I wrote one long, long ago  
9     that was a pretty basic primer, lost profits, Georgia  
10    Pacific factors, things of that sort. I don't recall if  
11    there was anything after that that was specifically  
12    patent-related. I do believe I had one or more articles  
13    that compared and contrasted damages under the  
14    Lanham Act to patent damages.

15 Q. Do you recall writing any article specific to  
16 copyright damages?

17 A. Not other than the ones that we've discussed.

18 Q. What articles have we discussed regarding  
19 copyright damages?

20 THE WITNESS: I'm sorry, I talked over.

21           A.    The chapter I wrote on non intellectual  
22   property included copyright.

23 BY MS. CANDIDO:

24	Q. Yes.
----	---------

25 A. Other than that, I don't remember anything that

Date: 07/28/2016  
July 28, 2016

25

1 was targeted -- I don't remember anything that was  
2 targeted only to copyrights. I don't, off the top of my  
3 head, remember anything that included copyrights, among  
4 other topics.

10:15 5 Q. Have you written any older publications  
6 specific to fair use in copyright?

7 A. No.

8 Q. What professional associations are you  
9 currently involved with?

10:15 10 A. Well, Licensing Executive Society, the American  
11 Marketing Association. For the CMA, I wouldn't say it's  
12 an association you're involved in. There's  
13 communication with the governing body, but it doesn't  
14 hold meetings or have committees that members  
10:16 15 participate in, or things like that, at least not to my  
16 knowledge. So LES and AMA are the two I would say I'm  
17 involved in, I think in the sense that you meant.

18 Q. Do you hold any leadership positions with  
19 either of those organizations?

10:16 20 A. Not any more.

21 Q. I think actually your CV mentions the  
22 International Trademark Association; are you --

23 A. Oh, I'm sorry, I forgot that. Yes, sure.

24 Q. You are currently involved with them?

10:17 25 A. Yes. I don't know how I could forget them.

July 28, 2016

58

1

A. Yes.

11:32

11:33

11:33

11:33

11:33

July 28, 2016

59

11:34

11:34

11:35

11:35

11:36



July 28, 2016

60

11:36

11:36

11:37

11:37

11:38

July 28, 2016

62

11:40

11:40

11:40

11:41

11:41

July 28, 2016

63

11:42

11:42

11:43

11:43

11:43

July 28, 2016

64

11:44

11:44

11:44

11:45

11:45

July 28, 2016

65

11:45

11:45

11:46

11:46

11:46

July 28, 2016

78

1 multi-page document, you know, it runs to 20, 30 pages  
2 of which the CLI may be mentioned in a couple of  
3 sentences. We didn't -- it's arguable that it would  
4 have been more accurate to consider those numbers. We  
12:59 5 looked for documents that assigned some non trivial  
6 amount of space to the CLI.

7 Q. I guess Figure 12 and Figure 13 are additional  
8 Arista documents that you considered?

9 A. Yes.

13:00 10 Q. With respect to -- strike that.  
11 You did one analysis of Arista's source code  
12 and a calculation of the source code required to  
13 implement the CLI; do you recall that?

14 A. Well, that's really Dr. Black's calculation.

13:00 15 Q. I guess --

16 A. Not Dr. Black, it was someone else, but it's  
17 specified in my report, yeah, the person's name is in  
18 there.

19 Q. Well, you cite to that calculation.

13:01 20 A. Right.

21 Q. Is it your opinion that the quantification of  
22 the amount of code required to implement a feature is a  
23 representation of the value of that feature?

24 A. Well, it could be. It depends on ultimately  
13:01 25 what the clarification is of what's relevant in this

July 28, 2016

79

1 case. There have been cases that I'm aware of where  
2 lines of code has been accepted as a valid allocation  
3 methodology, and cases where it's been rejected. So I  
4 think whether it's valid in this case or informative in  
13:01 5 this case is going to depend on what the ultimate shape  
6 of the case is in terms of what's covered by the  
7 copyrights.

8 BY MS. CANDIDO:

9 Q. From the perspective of a consumer, do you  
13:02 10 think the amount of code that it takes to implement a  
11 feature speaks to the value of or importance of a  
12 feature to the consumer?

13 A. I don't think it's something that the consumer  
14 is typically aware of. You know, I think what's in some  
13:02 15 cases valid is to look at the proportion of the code  
16 that's necessary to implement a desired functionality.

17 Q. Do you think more code makes a feature more  
18 desirable?

19 A. I think it depends on the circumstances of the  
13:02 20 case. Whether it turns out to be informative in this  
21 case or not, I don't know. That's why I didn't use it  
22 in the calculation.

23 Q. Did you give that source code counting analysis  
24 any weight in your opinion?

13:03 25 A. I would say not at this time. Certainly not in

July 28, 2016

80

1 any unique sense. It didn't -- not in any unique sense,  
2 and I didn't use it in a calculation. I presented it in  
3 my report because I don't think it's impossible that it  
4 could be used in the calculation, depending, again, on  
13:03 5 what the ultimate shape of the case is, but I can't  
6 anticipate that at this time.

7 Q. So you offered it as a data point, but it  
8 doesn't currently inform your opinion; is that fair?

9 A. It doesn't currently inform my calculation.

13:04 10 Q. On what basis do you think the source code  
11 calculation would be relevant to a fact finder as the  
12 case currently stands?

13 A. That's kind of an imponderable. There's so  
14 many variables that go into that, I don't know if I  
13:05 15 could answer that question.

16 (Deposition Exhibit 1594 marked.)

17 MR. SILBERT: Thanks.

18 BY MS. CANDIDO:

19 Q. I've handed you what's been marked  
13:06 20 Exhibit 1594. It's a printout of a natively-produced  
21 file Bates number ARISTANDCA11419567. We've given it  
22 -01 through -71 pagination for reference in the  
23 printout -- I'm sorry, through -72 printout, pagination  
24 of the printout.

13:06 25 This is the -- actually, no, it appears not to



July 28, 2016

81

13:07

13:07

13:07

13:08

13:08

July 28, 2016

212

18:02

18:06

18:06

18:06

18:07

July 28, 2016

213

18:07

18:08

18:08

18:08

18:09

July 28, 2016

214

18:09

18:09

18:10

18:10

18:11

July 28, 2016

215

18:11

18:12

18:12

18:12

18:12